

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 UNITED STATES OF AMERICA,)

4 Plaintiff,)

5 v.)

6 PIROUZ SEDAGHATY, et al.,)

7 Defendants.)

No. 05-60008-2-HO

) January 19, 2011

) Eugene, Oregon

8
9 TRANSCRIPT OF ORAL ARGUMENT

10 BEFORE THE HONORABLE MICHAEL R. HOGAN

11 UNITED STATES DISTRICT COURT JUDGE

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1 (Wednesday, January 19, 2011; 1:05 p.m.)

2 P R O C E E D I N G S

3 THE CLERK: This is the time set for Case
4 05-60008, United States of America versus Pirouz
5 Sedaghaty, time set for oral argument on motion for
6 release from custody number 519.

7 THE COURT: Counsel, I'm, of course, familiar
8 with your pleadings. Please don't repeat them.

9 MR. MATASAR: I won't, Your Honor. I have
10 three points, should take two minutes total.

11 THE COURT: All right.

12 MR. MATASAR: First of all, I want to point
13 out, Your Honor, after all we do have the adversary
14 system here, the government has taken a position
15 strongly against release throughout this case. There
16 was a month-long release hearing before Judge Coffin,
17 further proceedings in front of you. We take it as
18 extremely significant that they have changed their
19 positions.

20 Second of all, concerning the issue of flight
21 risk, there is a new report that you have from Pretrial
22 Services, we saw it today. I will not belabor the
23 flight risk issue beyond what's in the report, which we
24 agree with.

25 Finally, to the extent that the court is

1 concerned about the ultimate ruling on the motions for a
2 new trial, the government has indicated they have a
3 different view than we do of the importance of the
4 material that was not provided to us. I will not go
5 into it, but I will point out that repeatedly the
6 government itself in the closing argument and in their
7 posttrial briefing has talked about the key issue in
8 this case was willfulness. And in their papers they
9 talk about how important the witnesses who testified,
10 that he directly engaged in fund-raising for the
11 mujahideen.

12 They say in their posttrial papers on page 28
13 against a new trial, the fund-raising for the mujahideen
14 was extremely probative of the defendant's knowledge,
15 intent, lack of mistake, or accident, was directly
16 relevant to the issue of willfulness.

17 THE COURT: Yeah, I remember those things. Let
18 me ask a couple of questions. In the pleading filed
19 yesterday you say at paragraph 2 -- actually, you may
20 not have signed it, whoever signed it, yes, your name is
21 on there with Mr. Wax, I'm going to excerpt, the trial
22 prosecutors knew Richard Cabral was paid \$14,500.

23 MR. MATASAR: Yes.

24 THE COURT: What's that based on?

25 MR. MATASAR: A statement from the United

1 States Attorney directly to us.

2 THE COURT: Excuse me?

3 MR. MATASAR: Directly to me and Mr. Wax.

4 THE COURT: So you're reporting something that
5 someone else said to you, right?

6 MR. MATASAR: Correct.

7 THE COURT: And then over on page 5, paragraph
8 9, and I'll just summarize here, Barbara Cabral falsely
9 stated to government agents that Pete Seda went to Saudi
10 Arabia for the Hajj in 2000, what's that based on?

11 MR. MATASAR: Your Honor, we have seen the
12 government's investigation of the period February and
13 March 2000. They knew every single thing that Pete Seda
14 was doing during that time period. There is no
15 indication at all that he went to Saudi Arabia during
16 that time period. Incorrectly may be the more proper
17 term, but it was an incorrect statement that he was in
18 Saudi Arabia, and the government knew that.

19 THE COURT: What do the parties -- what's
20 counsel's intent on getting me the 302s?

21 MR. MATASAR: We have them, Your Honor. We can
22 give them to you now.

23 THE COURT: What I'm interested --

24 MR. MATASAR: The ones that we were given. We
25 believe there are a lot more that we weren't given, but

1 if what you are talking about is the 302s that we've
2 been given, I can give them to you right now.

3 THE COURT: What I'm interested in knowing is
4 in 302s recently transferred to you whether that's the
5 first indication you had of the witness payments or not.
6 In other words, I want to associate the thing that's not
7 clear from the pleadings is what you knew when in that
8 regard.

9 MR. MATASAR: Your Honor, we were completely
10 unaware until we received these 302s about the actual
11 payments. We were told about -- in December of 2010
12 that there may have been a promise to pay one witness
13 some money. Then when we got the 302s, we got the
14 information about that promise to pay the witness some
15 money, and also the fact that there had actually been
16 \$14,500 in cash paid to the husband of the witness who
17 was interviewed while the witness was present, and the
18 witness also gave information. Is that --

19 MR. WAX: Your Honor, we do not believe that
20 that's going to be contested. The information that --

21 THE COURT: No, that's -- I'm not suggesting
22 that will be contested. What I'm trying to understand
23 is the timing --

24 MR. WAX: On December --

25 THE COURT: -- whether this was entirely new

1 information to the defense team or not.

2 MR. WAX: It is, Your Honor.

3 THE COURT: It is as of when?

4 MR. WAX: December 21, I believe it is, when
5 Mr. Cardani called me and advised that there was some
6 new information.

7 THE COURT: Did you have information about a
8 payment to a witness before that?

9 MR. WAX: No, none.

10 THE COURT: That's all I have. Now, my
11 experience tells me, my trick knee, whatever it is, that
12 someone is probably working on affidavits right now, and
13 there is a discovery motion out there, too, and what I'm
14 trying to do is project a potential schedule for
15 resolution of these matters. So if -- I assume --
16 frankly, I would expect there may be differences between
17 the government and the defense in that regard, but I'd
18 like to have, in a few words, each of your thoughts on
19 that if you are prepared to give them.

20 MR. MATASAR: We're prepared, Your Honor. And
21 we would like to have a hearing on the discovery aspect
22 of our motions as quickly as the government could be
23 ready. We could be ready in a week.

24 THE COURT: All right. And who wants to
25 respond for the government? Ms. Zusman?

1 MS. ZUSMAN: Your Honor, Kelly Zusman appearing
2 on behalf of the United States today. And as you
3 anticipated, we are -- pardon me -- actively working on
4 responding to the motions that have been filed very
5 recently.

6 On the discovery motion, I would ask the court
7 for a week for us to respond. On the new trial,
8 30 days.

9 As the court knows, this court -- this case has
10 a very lengthy history. I was sort of dropped into it a
11 couple of weeks ago. It's going to take me a little
12 time to get up to speed, so I would ask for at least
13 30 days on the new trial motion response.

14 THE COURT: You may have that. I was just
15 trying to project how long before this is going to be on
16 my desk to give you some decisions.

17 MR. WAX: Your Honor, we've indicated in our
18 pleadings that we anticipate that we would also be
19 filing a motion to dismiss. In order to frame that
20 motion as accurately as we can, we need to have the
21 discovery that we have requested, and we believe the
22 additional discovery that the government will agree to
23 provide. So that in terms of setting a schedule, I
24 think that we need to factor in that we will need
25 additional time after the discovery matters are

1 concluded before we'll be in a position to file the
2 motion to dismiss.

3 THE COURT: I'm going to give you -- give each
4 of you 30 days also to give me a brief on double
5 jeopardy issues to the extent they exist. All right?

6 Is there anything more?

7 MR. MATASAR: Well, just the release matter,
8 Your Honor, of course.

9 THE COURT: Yeah, of course. All right. Does
10 the government have anything?

11 MS. ZUSMAN: We have nothing to add to our
12 written submission, Your Honor.

13 THE COURT: All right. Thank you. The
14 defendant will be released after he's returned to
15 Portland on the conditions suggested by Pretrial
16 Services, which include all of the previous conditions,
17 plus I will require active GPS monitoring 24 hours. Any
18 questions?

19 MR. WAX: Mechanically, Your Honor, what does
20 that mean, "after his return to Portland"?

21 THE COURT: That means the -- he'll be taken
22 back to Portland by the Marshals.

23 MR. WAX: By the Marshal.

24 THE COURT: And then we have a charged up GPS
25 unit here in Eugene, but given where he's been living

1 and so on, I thought that made more sense. And so the
2 Marshal will take him back to Portland. He'll be
3 processed there.

4 And so, sir, this means that I expect someone
5 to know where you are 24 hours a day. And you -- your
6 record is not perfect with regard to showing up. You
7 absented yourself early in this investigation for a
8 considerable period of time. I will not abide by any
9 missteps on your part in this regard. Do you understand
10 that?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: All right. Fine. Thank you.

13 Anything further?

14 MR. MATASAR: No, Your Honor.

15 THE COURT: We're in recess.

16 (The proceedings were concluded at 1:14 p.m.)
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1 CERTIFICATE

2 I, Deborah Wilhelm, Certified Shorthand Reporter
3 for the State of Oregon, do hereby certify that I was
4 present at and reported in machine shorthand the oral
5 proceedings had in the above-entitled matter. I hereby
6 certify that the foregoing is a true and correct
7 transcript, to the best of my skill and ability, dated
8 this 26th day of January, 2011.

9
10
11
12 /s/ Deborah Wilhelm

13 _____
14 Deborah Wilhelm, RPR
15 Certified Shorthand Reporter
16 Certificate No. 00-0363
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